

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER AND VEHICLE SERVICES DIVISION

In the Matter of the Proposed Rules of
the Department of Public Safety
Governing School Bus Drivers,
Minnesota Rules, Chapter 7414

PREHEARING ORDER

On August 27, 1997, the Department of Public Safety initiated a rulemaking proceeding with the Office of Administrative Hearings. The Department requested the assignment of an Administrative Law Judge for a "dual notice" hearing, whereby the Department would attempt to adopt the rules without a public hearing but, if more than 25 persons requested one, a hearing would be held.

On September 22, 1997, the Department published its dual notice in the State Register, setting a comment period that ran until October 22. That date was also the date for persons to request a hearing.

On October 7, the Minnesota Chiropractic Association filed a comment with the Department, urging that the Department's proposed rules be amended to allow chiropractors to perform certain services which the rules, as published, would only be allowed to be performed by medical doctors. The comment stated that unless the rules were so amended, members of the Association would seek a hearing. Attached to the letter was a petition signed by 32 persons, requesting that a hearing be held on the proposed amendments.

On October 15, 1997, the Department filed a letter with the Administrative Law Judge, arguing that the change sought by the Chiropractic Association was not "fair game" for consideration in this rulemaking proceeding because the question of medical doctors versus chiropractors had already been dealt with in prior rulemaking proceedings, was now a part of the existing rule, and the concept was not proposed to be changed as a part of this proceeding. The Department argued that although the particular rule that included medical doctors but excluded chiropractors was being reworded to improve clarity and eliminate ambiguity, the underlying concept was still the same. The Department's letter ended with a request that the Administrative Law Judge determine whether or not the requests for a hearing submitted by the Chiropractic Association were valid because, the Department argued, they requested a hearing on a provision which was beyond the scope of this proceeding.

On October 16, the Administrative Law Judge transmitted a copy of the Department's letter to the Chiropractic Association, and solicited any response which the Association might care to make.

On October 21, the Association did respond to the Department's letter. They pointed out that there is no statute or rule which authorizes the Department to reject their requests for hearing. On the merits, the Association argued that a recent Attorney General's Opinion, coupled with a 1993 statutory change and a related proposal in these rules, makes the Department's past practices irrelevant and requires that the Department accept certificates signed by a chiropractor.

Based upon all of the files herein, and for the reasons that are stated more fully in the Memorandum attached hereto, the Administrative Law Judge makes the following:

ORDER

That the Department of Public Safety may NOT disregard or "declare invalid" the requests for a public hearing filed by the 32 persons whose petition was submitted by the Minnesota Chiropractic Association in its letter of October 7, 1997.

Dated this _____ day of October 1997.

ALLAN W. KLEIN

Administrative Law Judge

MEMORANDUM

The Department seeks a ruling, in advance of the hearing, that certain of the requests for a hearing are invalid. The Administrative Law Judge believes that such a request is a serious matter and should be granted, if at all, only in the clearest of cases. Based on the limited material which the Administrative Law Judge has at his disposal at this point in the proceeding, he cannot agree that this is such a case.

Minn. Stat. § 14.25, subd. 1 provides, in pertinent part, as follows:

If, during the 30-day period allowed for comment, 25 or more persons submit to the agency a written request for a public hearing of the proposed rule, the agency shall proceed under the provisions

of sections 14.14 to 14.20. The written request must include: (1) the name and address of the person requesting the public hearing; and (2) the portion or portions of the rule to which the person objects or a statement that the person opposes the entire rule. . . . A written request for a public hearing that does not comply with the requirements of this section is invalid and must not be counted by the agency for purposes of determining whether a public hearing must be held.

Nowhere in that section is there any explicit authority for the Administrative Law Judge to take the action requested by the Department in this case. Nor is there authority anywhere else in the Administrative Procedure Act. As far as can be ascertained, such authority has never been exercised before. Even assuming, however, that the Administrative Law Judge does have inherent authority to grant such a request in an appropriate case, it should be granted only in the clearest of circumstances, where the Administrative Law Judge is comfortable that there is adequate evidence in the record to assure a correct decision. This case is not such a circumstance, and although it may be that the Department will prevail on this issue in the end, it is far more prudent to make that decision after all interested persons have had an opportunity to be heard on the issue and there is a full and complete record. In addition, the Administrative Law Judge would like the participants to address the question of a possible conflict between Minn. Stat. section 171.321 (1996, as amended) and the Department's proposed rule in light of the most recent Attorney General's letter (Letter to Larry A. Spicer, D.C. from Lucinda E. Jesson, Deputy Attorney General, dated April 28, 1997).